

Approved As Submitted: 1/30/02

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL AND
SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES - JANUARY 16, 2002**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 6:31 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Carr, Chang, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Sellers (arrived at 6:35 p.m.)

DECLARATION OF POSTING OF AGENDA

Office Assistant II Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

CLOSED SESSION

City Manager/Executive Director Tewes announced the below listed closed session items. He informed the City Council/Agency Commission that closed session items 3 and 5 would not be discussed this evening.

City Council Action

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure to Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

City Council and Redevelopment Agency Action

2.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL AND EXISTING LITIGATION:
CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

Legal Authority: Government Code 54956.8 & 54956.9(a) & (c) (1 potential case)

Real Property(ies) involved: APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of
Cochrane Road (St. Louise Hospital property)

City Negotiators: Agency Members; Executive Director; Agency Counsel; F. Gale Conner,

Case Name: special counsel; Rutan & Tucker, special counsel
San Jose Christian College v. City of Morgan Hill
Case Numbers: USDC Northern California No. C01-20857 RMW
Closed Session Topic: Potential Existing Litigation/Real Estate Negotiations

3.

CONFERENCE WITH LEGAL COUNSEL - REAL PROPERTY NEGOTIATOR

Legal Authority: Government Code 54956.8
Real Property Involved: APNs 773-06-008 & 009, 905 West Main Avenue, 24.54 acres
Negotiating Parties:
For City/Agency: City Manager/Executive Director; City Attorney/Agency Counsel;
Director of Business Assistance & Housing Services
For Property Owners: Virginia Acton 1993 Trust
Closed Session Topic: Acquisition of Real Property

4.

**CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION & CONFERENCE WITH
REAL PROPERTY NEGOTIATOR**

Legal Authority: Government Code 54956.8 & 54956.9(c) (1 potential case)
Property: APN 779-05-010 & 010; 13865 Monterey Road (46.96 acres)
Negotiating Parties:
For City/Agency: City Manager/Executive Director; Public Works Director, Director of
Business Assistance & Housing Services; City Attorney/Agency Counsel;
Special Counsel
For Property Owners: William Sing and Young Kay Mock; The GFI Company
Closed Session Topic: Acquisition of Real Property

5.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)
Name of Case: Hacienda Valley Mobile Estates v. City of Morgan Hill, et al.; United States
District Court, Northern District of California, Number C01-20976 PVT ADR

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 6:33 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:00 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken on the above listed closed session items as they were continued to the conclusion of the meeting.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor Kennedy, Robert Benich led the Pledge of Allegiance.

CITY COUNCIL REPORT

Council Member Chang reported that the SCRWA Board held a meeting and discussed the bond for the sewer plant. She indicated that the Day Worker Committee is proceeding.

CITY MANAGER'S REPORT

City Manager Tewes stated that staff is preparing for a workshop to be held by the City Council on Wednesday, January 30, 2002 at 3:00 p.m. At this workshop, the City Council is expected to review all of the projects being financed by the Redevelopment Agency and develop priorities. He indicated that the City Council authorized staff to retain outside assistance in developing a master plan for the Sports and Aquatic Center and obtain budget estimates for various scopes of projects as well as phases of the project. He indicated that a few weeks ago, the City Council directed staff to make refinements to potential models on how the City might operate the indoor recreation center. The City Council asked the YMCA to provide clarifying information. He stated that progress has been made in both fronts.

CITY ATTORNEY'S REPORT

City Attorney Leichter stated that she did not have a report to present this evening.

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Robert Benich, 498 Via Sorento, stated that the City has begun an extensive building campaign since the original founding of the town. He noted that both new and renovated projects are moving forward (e.g., community & cultural center, theater, library, city hall, aquatic center, court house, fire station and police station). He called attention to the recently adopted 20- year general plan approved by the City Council in July 2001. He referred to the section under Community

Development, Goal 12 (page 35) "Encourages installation of public art in new and renovated non residential projects." He identified a three-step process: 1) assign a budget for public art for each community building project. He noted that this is usually based on a percentage of the building cost (e.g., 1-3% of project building cost). 2) Call for bids to artists for a particular community building project. An artist must submit a proposal for that particular building project by a specified deadline within an allocated budget. 3) A committee reviews the artists' proposals and makes a recommendation for 2-3 alternatives which will then be decided upon by the City Council. He felt that this would be an easy process to implement. He stated that the projects that are now being worked on and being planned will set the tone for the community the next 100-years.

Council Member Sellers requested that staff agendize Mr. Benich's recommendation to see if it makes sense to set a percentage budget amount for art as part of the City Council's discussion at the prioritization workshop. He stated that he gets anxious when there is a least common dominator, art. He wanted to make sure that something is done that allows for artistic freedom to flourish.

Council Member Tate requested that discussion of where public art fits in terms of private corporations and the Morgan Hill Foundation be part of the discussion (solicit outside help).

No other comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Chang and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-6 as follows:*

1. DECEMBER 2001 FINANCE AND INVESTMENT REPORT

Action: ***Accepted** and **Filed** Report.*

2. APPROPRIATION OF FUNDS AND AMENDMENT TO PROFESSIONAL SERVICES CONTRACT FOR DESIGN OF THE MAIN AVENUE/UPRR SAFETY IMPROVEMENT PROJECT

Actions:

1. **Approved** *Appropriation of Following Amounts from Current Year Unappropriated Fund Balances:*
 - a. \$9,000 from Water Fund Balance
 - b. \$20,260 from Traffic Impact Fund Balance; and
2. **Approved** *an Amendment to the Consultant Agreement with Rajappan & Meyer Increasing the Contract Amount by \$29,260 and the Term by 1-year and **Authorized** the City Manager to Execute the Amendment to Agreement.*

3. **REPAIRS TO PUBLIC WORKS VACTOR**

Action: **Approved** Issuance of Purchase Order to GCS Western Power and Equipment (GCS) to Repair the Public Works Vactor at a Cost Not to Exceed \$24,000.

4. **APPROVAL OF FUNDING FOR TEMPORARY ENGINEERING SERVICES**

Action: **Approved** Funding for Additional Temporary Full-time Engineer.

5. **EXTENSION OF CONTRACT FOR CONSULTANT PLANNING SERVICES**

Action: **Authorized** the City Manager to Execute a Consultant Services Agreement for Contract Planning Services at a Cost Not to Exceed \$30,000.

6. **ADOPTION OF JOB DESCRIPTION AND SALARY RANGE FOR THE POSITION OF PUBLIC WORKS INSPECTION SUPERVISOR**

Action: **Adopted** the New Job Description and Salary Range for Position of Public Works Inspection Supervisor.

City Council & Redevelopment Agency Action

Action: On a motion by Council/Vice-chairwoman Chang and seconded by Council/Agency Member Tate, the City Council/Agency Commission unanimously (5-0) **Approved** Consent Calendar Item 7 as follows:

7. **ANNUAL FINANCIAL REPORTS FOR 2000/01 FISCAL YEAR**

Action: **1) Accepted** and **Filed** the Following Financial Reports for the Year Ended June 30, 2001: a) Comprehensive Annual Financial Report for the City; b) Annual Financial Statements for the Redevelopment Agency; and c) "Single Audit" of Federal Dollars Received by the City.

City Council Action

PUBLIC HEARINGS:

8. **URBAN SERVICE AREA APPLICATION, USA-01-02, GENERAL PLAN AMENDMENT, GPA-01-04, ZONING AMENDMENT, ZA-01-09 AND ANNEXATION, ANX-01-03: HALE AVENUE - DIOCESE OF SAN JOSE**

Director of Community Development Bischoff presented the staff report and indicated that staff received comments on the EIR from the Department of Transportation as well as other agencies. He recommended that this item be continued to March 6, 2002 following receipt of public testimony in order to complete the EIR process.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Continued** the Public Hearing to March 6, 2002.*

9. DEVELOPMENT AGREEMENT AMENDMENT, DAA-00-13: NINA LANE - SHAW
- Ordinance No. 1543, New Series

Director of Community Development Bischoff presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Carr, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1543, New Series.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1543, New Series by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1527, NEW SERIES TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-00-05: NINA LANE-SHAW TO ALLOW FOR A SIX-MONTH EXTENSION OF TIME (APN 817-60-020) by the following roll call vote: AYES: Carr, Chang; Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

City Manager Tewes advised the City Council that it has an adopted rule that stipulates that public hearings are not to be called before 7:30 p.m. Therefore, he recommended that the City Council defer the public hearing items until 7:30 p.m.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Tabled** the public hearings until 7:30 p.m.*

Action: *It was the consensus of the City Council **to Consider** items 12 - 16 at this time.*

SECOND READING OF ORDINANCE:

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Adopted** the below listed Ordinances as follows:*

12. ADOPT ORDINANCE NO. 1534 NEW SERIES

An Ordinance of the City Council of the City of Morgan Hill Approving Development

Agreement Amendment Application DAA-99-04 for Measure P Project MP-98-24: East Dunne - O'Connell (APNs 817-74-005 & -006) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

13. ADOPT ORDINANCE NO. 1539 NEW SERIES

An Ordinance of the City Council of the City of Morgan Hill Approving of a Development Agreement, DA-01-05 for Application MP 00-19: Sunnyside - Sunnyside Developers (APN 767-29-006) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

14. ADOPT ORDINANCE NO. 1540 NEW SERIES

An Ordinance of the City Council of the City of Morgan Hill Approving of a Development Agreement, DA-01-04 for Application MP 00-18: Central - Central Park. (APN 726-27-053) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

15. ADOPT ORDINANCE NO. 1541 NEW SERIES

An Ordinance of the City Council of the City of Morgan Hill Pre-zoning 35-acres Located on the East side of Condit Road, West of Murphy Avenue, Between San Pedro Avenue and Barrett Avenue from County A-20 AC to Public Facility (APN 817-13-001) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

16. ADOPT ORDINANCE NO. 1542 NEW SERIES

An Ordinance of the City Council of the City of Morgan Hill Approving a Six-month Exception to the Loss of Building Allotment for One Unit of a 4-Lot Subdivision which Was Awarded Allocations through the Residential Development Control System for FY 2000-2001 (One Unit) and FY 2001-02 (Three Units) (APN 728-11-026) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

PUBLIC HEARINGS (Continued):

10. APPLICATION ZONING AMENDMENT ZA-01-19: CONDIT-LIVE WIRE LLC (CONDIT PUD ZONE AMENDMENT) - Ordinance 1544, New Series

Director of Community Development Bischoff presented the staff report. He recommended that Exhibit B, page 2, No. 29a, be amended to retain 5 feet (delete 10 feet) and that the strike out second sentence be retained.

Mayor Pro Tempore Carr stated that as he read through staff's recommended changes to the proposed PUD guidelines, he was reminded of the City Council's exercise last night in which the

Council asked the Planning Commission and ARB to join the City Council in discussing design guidelines, specially gateway areas. He noted that the site under this application is in a gateway area into the community. He asked if the City is premature in suggesting changes to a PUD when the City Council has many individuals willing to invest time in the development of specific design guidelines that may be different from what is coming to the City Council as suggestions this evening.

Mr. Bischoff agreed that this is a high profiled area next to Highway 101. He stated that staff worked closely with Council Member Tate and a member of the Planning Commission (reviewed by the Planning Commission) in order to develop PUD guidelines. He indicated that the PUD guidelines are very stringent and that they would probably be consistent with what comes out of the architectural review handbook and revisions to the design review ordinance. He indicated that adoption of the guidelines this evening would allow two specific applicants who are anxious to proceed with their plans to move forward. If the City was to place this application on hold, it would delay the applicants' plans to proceed. He felt that the recommended PUD zone amendment would be acceptable. He further stated that the process started last night in trying to come to some consensus on design guidelines may follow some of the recommendations contained in this PUD ordinance.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1544, New Series.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council **Introduced** Ordinance No. 1544, New Series by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PRECISE DEVELOPMENT PLAN AND DESIGN GUIDELINES FOR A PUD DISTRICT ON THE WEST SIDE OF CONDIT ROAD, BETWEEN DUNNE AND TENNANT AVENUES (APNS 817-12-003, 004, 016 & 017; and APNs 817-13-019, 020, 021, 022, 024, 026, 027, 029, 030, 031, 032, 034 & 035) amending Exhibit B, page 2, No. 29a. to retain 5 feet (delete 10 feet) and retention of the strike out second sentence by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN : None; ABSENT: None.*

Council Member Tate stated that a PUD was put into place over a year ago and that a burden was placed on the first applicant within the PUD to request development, noting that this applicant had to come up with the guidelines for the entire PUD area. He thanked the applicant for the efforts put forth with the PUD guidelines.

Mayor Kennedy said that he understood that there was a fair amount of work put into the PUD for the entire Condit PUD area. He stated that the City Council's appreciation of this effort.

8. URBAN SERVICE AREA APPLICATION, USA-01-02, GENERAL PLAN AMENDMENT, GPA-01-04, ZONING AMENDMENT, ZA-01-09 AND ANNEXATION, ANX-01-03: HALE AVENUE - DIOCESE OF SAN JOSE

Mayor Kennedy reopened the public hearing. No comments were offered.

Action: *Mayor Kennedy announced that the previous motion to continue the public hearing to March 6 would stand.*

9. DEVELOPMENT AGREEMENT AMENDMENT, DAA-00-13: NINA LANE - SHAW - Ordinance No. 1543, New Series

Mayor Kennedy reopened the public hearing. No comments were offered.

Action: *Mayor Kennedy announced that the previous motion to waive the reading in full and the introduction of Ordinance No. 1543, New Series would stand.*

OTHER BUSINESS

11. UPDATE AND EXTENSION OF MEASURE P

City Manager Tewes indicated that state law requires each city and county to adopt a housing element at least every five years. Under the law, cities and counties are required to submit housing elements to the State Department of Housing and Community Development (HCD). The HCD reviews housing elements and provides comments. The department is directed, by the legislature, to determine whether the housing element complies with state law. He stated that actual compliance is a function of judicial review, not administrative review. He said that HCD is given the responsibility of reviewing plans and give opinions as to whether a housing element is in compliance. He stated that he is aware of only one instance in which the certification of HCD is critical that being when a Redevelopment Agency proposes to adopt a new or amended redevelopment plan. In this instance, you cannot do so unless you have a certified housing element. He indicated that in the past legislative session, SB 910 was introduced by Senator Dunn from Orange County who proposes to add additional teeth by suggesting that if a city or county does not have a certified housing element, then the state would be authorized to withhold certain subventions to cities or counties. He said that SB 910 has made it out of its house of origin (Senate) and that it is in the assembly where it is a two-year bill. He knows that Assembly Member Lowenthal, Chair of the Assembly Housing Committee, has indicated that it is not his intention to bring the bill up unless and until there is a consensus development process among representatives of cities and counties and housing advocates to see whether a less onerous approach could be adopted.

Director of Community Development Bischoff presented the staff report. He stated that should the City Council wish to proceed with an initiative to amend Measure P, staff would recommend that the City Council appropriate funds to cover potential added legal costs, environmental costs, as well as public outreach and educational costs. Staff further recommends that the City Council allocate \$65,000 for the possible initiative ballot measure which would include \$10,000-\$15,000 to cover election costs.

Council Member Sellers questioned whether the City would be out of compliance should a ballot measure not be included in the November 2002 ballot to amend Measure P?

Mr. Bischoff stated that staff held a meeting with a representative from HCD some months ago in which Mayor Pro Tempore Carr participated. Staff asked the representative that should the City comply with state housing element law in all respects other than the City's ability to provide its fair share of housing units, would it be possible to receive certification from them contingent upon voter approval of an amendment to Measure P. The response received was that the State felt that they could give the City a conditional/provisional certification with a November election date being mentioned. If it becomes a March 2003 election date, he was not sure if the state would still be willing to recommend a provisional certification. He informed the City Council that staff has provided two additional letters received since the publication of the agenda packet from Don Myers and Fred Amoroso addressing issues that they would like to bring to the Council's attention.

Council Member Sellers stated that he understands that there is an increase cost for conducting an election in a non standard election period. He asked if this cost was substantial.

City Clerk Torrez responded that it is difficult to identify the cost as it would depend whether the City would be responsible for the election or if it would be shared with other jurisdictions.

Council Member Tate inquired as to the risk to the City if it waits to place a measure on the November 2004 ballot?

City Manager Tewes clarified his previous remarks by stating that there are severe penalties for not being in compliance in terms of the City's housing element. He said that it is the administrative agency of the state that is responsible for reviewing housing elements and advises cities and counties whether or not they will certify them. If they do not certify housing elements, there is no particular penalty. However, should a private party bring an action in court to challenge the city's compliance with the Housing Element, there would be severe penalties that would be imposed by the judge that may include a moratorium on building until such time that a city comes into compliance. He stated that the question of whether or not the State agency can do anything is being debated in the legislature at this time.

Council Member Chang noted that 30% of the agencies in the state do not have certified housing elements.

Mr. Bischoff stated that staff asked its housing element consultant as to the number of cities who have been challenged because housing elements were not certified. It was his recollection that it was indicated there were very few, if any. He indicated that the City's Housing Element has been certified.

Mayor Kennedy opened the floor to public comment.

Robert Benich, 498 Via Sorento, addressing the Council as a private citizen, felt that it was important that the City be in compliance with the recently adopted General Plan. He noted that the current Measure P expires in 2010 and that the City's General Plan goes out to the year 2020. He felt that Measure P should have a goal of 48,000 population in 2020, similar to the 48,000 contained in the General Plan. Whether this is done by Council action or a ballot measure is immaterial as he felt that this action should be taken as soon as possible in order to mitigate any possible risk(s).

Ralph Lyle, 2881 Whipperwill Drive, indicated that although he serves the City as a Planning Commissioner, he was not addressing the City Council as a Planning Commissioner. He informed the City Council that he submitted a letter identifying the issues of potential changes that have come up in the past that could be made to Measure P, along with pros and cons.

Bruce Tichinin, 440 Claremont Drive, agreed, in general, that it is always good to revisit important laws after they have been implemented for some time to see if adjustments would improve them. He did not believe that an amendment to Measure P would increase the rate of growth or the population cap. He felt that there was every reason to believe that as the City gets closer to 2010, it will be natural for the City to extend Measure P's provisions to the year 2020 and meet requirements relating to future growth. He felt that it would be premature to adopt amendments relating to the rate of growth or to the population cap at this time. He stated that he did not know what it is about Measure P that is being contemplated to meet the requirements of state law regarding the City's housing element.

No further comments were offered.

Mr. Bischoff stated that the driving force behind this issue is the City's ability to produce as much housing as ABAG believes that Morgan Hill should. He indicated that the State has a number of housing units that need to be constructed by 2006. The state allocates these units to various regions in the state. ABAG further divides these units to cities. ABAG has indicated that Morgan Hill should not impose hindrances or obstacles to the construction of 2,484 units between January 1, 1999 and June 30, 2006. Staff has looked at the numbers that the City has produced since January 1, 1999 and looked at how many units staff expects the City would be able to construct by June 30, 2006. Staff has come up with a deficit number of 236 units. He said that the state does not require a city to build affordable units but requires that there be no impediments to their construction. The City would have to ensure that it can build the additional 236 units, some of these units to be used for affordable projects. He responded to the reference of extending the horizon of Measure P to be

consistent with the General Plan. He felt that it was important to mention that the 48,000 population number contained in the new General Plan assumes that the City would be building 250 units per year out to the year 2020 which is consistent with what was envisioned under Measure P and Measure E. He indicated that the General Plan Task Force spent a lot of time discussing how fast the City should be growing. The Task Force and the City Council did not want to see a gradual acceleration of growth, but rather look at a fixed number or linear growth in the community.

Mayor Pro Tempore Carr indicated that the City's housing element update was submitted to the state within the timeline. It is felt that the City put together a very good housing element that met all State requirements with the exception of the additional 236 units. It was decided that the impediment to the 236 units was the restriction(s) contained within Measure P.

Council Member Tate stated that when the City Council held a hearing on the housing element, it was stated that there had to be a quick fix. He was flabbergasted to find that contemplation was being given to placing a modification to Measure P on the November 2002 election. However, it triggered a lot of thought. He felt that several speakers and letters raised good points. He felt that there was a problem with Measure E/P in terms of how the formula was set up to compute how many units can be built in a year. It was stated that the General Plan update task force wanted to base the population on a set number of houses per year, a much simpler approach versus the formula that involves number of individuals living in a household. If the City had followed Measure E to the end, the City would have a population of 30,000 in the year 2000. The City conscientiously adopted Measure P knowing that this would take the population up to 32,000 in the year 2000 so that the City would be ahead of what it wanted when Measure E was adopted in order to smooth things out. What has been achieved is 34,000+ in the year 2000. He felt that a problem with Measure P is that the formula is not a constant building block.

Council Member Tate felt that there were other ways to fix Measure P to make it a constant rate of growth so that in the year 2010, the population is 38,000, getting to the 46,600 in 2020 with a finite growth approach. He recommended review of the ordinance but stated that there are not many things in Measure P that need to be fixed. He noted that the City went from Measure E to Measure P and from a 50/50 east/west split to $\frac{1}{3}$ east, $\frac{1}{3}$ west and $\frac{1}{3}$ anywhere split and stated that this was not aggressive enough. The City is now finding that it is allocating on the west side of Monterey Road to very low scoring projects as there is not enough building space on the west side to get quality projects built. He felt that there were other problems and that there were things that can be done to make it easier for developers through the competition process as well as other things that can be looked at to fix Measure P and make it a simpler approach. He agreed with Mr. Benich that as soon as the City can get Measure P in line with the General Plan, the more the desirable it would be. He said that he wanted to place the issue on the ballot when most of the citizens can have a voice in what the City does on its growth control as it is a vital element to the community. He expressed concern that citizens would forget to vote in special elections or in the March 2003 election. He would support a November 2004 election if it was not for the Housing Element issue to address all issues to the benefit of the community and not violate the basic philosophy of

Measure P. If a measure needs to be drafted for the November 2002 election, he felt that this would result in a tight time frame.

Mayor Kennedy felt that both Measure E and Measure P have served this community well. He recommended a book entitled Better Not Bigger for the reading of the City Council and the Planning Commission. The book states that cities who have growth control ordinances and urban growth boundaries in place generally do better in terms of quality of life for their residents. These communities are so successful that they become popular and individuals want to relocate to these communities. This, in itself, can create difficulties. He felt that the City needs to be cognizant of the need for affordable housing. It was his belief that the City has mechanisms in place through the redevelopment agency, inclusionary zoning requirements of Measure P, and programs to encourage affordable housing. He stated his support of Council Member Tate's suggestion and stated that whatever is decided upon, the City needs to make sure that the public is involved in the process. He said that the City may wish to do some tweaking of Measure P, looking at it to make sure that it is serving the City in the best way that it can. He said that he was not prepared to identify how this can be done at this time nor to make a major decision this evening.

Council Member Sellers stated that he understood that deadlines are coming up and that he has concerns about Measure P. He felt that there were several reasons to review Measure P and consider updating it. However, he sees this as evolutionary from Measure E to Measure P to the next ballot measure. He felt that there were areas that were brought up in staff's comments that should be looked at and stated that he would like a couple of more areas to be considered such as variety of housing stock. He said that Morgan Hill has evolved into becoming the youngest city and has become the largest number of people per household of any city in the county. He felt that Measure P, in many ways, led to this. He felt that the City can do more by looking at building units that might have older residents or non-child households that would get the City closer to the units that people are looking for Morgan Hill to build without necessarily increasing the population. He did not recommend that the Council go into all these issues this evening but rather to discuss these issues on the City's timeline unless the City faces severe legal penalties. He recommended that the City proceed in a way that makes sense to the City. If it turns out that the City is able to put a committee together or determine a course of action in 3-6 months, he felt that it would be great. However, if it takes longer than this time period, the City needs to make sure that discussions are thorough. He felt that it was important to consider setting a goal of a March 2004 election. This date is being recommended because it would give the city plenty of time and avoids a special election which may result in a lower voter turn out and avoids any municipal elections which would unduly influence the results. If a committee comes up in a relatively short period of time and recommends that the city move a ballot measure forward, the City Council can consider it at that time. He recommended that formation of a committee and parameters in which the committee might want to operate and proceed be scheduled for a future meeting. Once the committee gets underway, a timeline can be identified as well as a scope.

Council Member Tate supported the recommended March 2004 election date.

Mayor Pro Tempore Carr concurred with comments expressed by Council Members. He felt that there was an agreement that the City Council needs to set up a process to talk about ballot language for an update to Measure P. He wanted to give staff the opportunity to return to the City Council with the idea that this process needs to include as much public participation as possible. He did not have an idea as to the components of the committee and stated that he would like to hear staff's thoughts on the make up of the committee as well as the scope of amendments to Measure P. He stated that he has some issues that he would be interested in addressing, in addition to those identified by staff. He stated that he would like to give an opportunity for the committee to have their own thoughts without biases based on comments expressed by the City Council. Once he hears the committee's thoughts, he would add additional thoughts at that time. Regarding the election date, he felt that there was urgency toward trying to be as close to compliance with State law as possible. The City may not agree with the number that the State has given the City nor agree with the numbers or the process that the state or ABAG has given the City but noted that they are there. He felt that staff did a good job expressing the City's concerns to ABAG and that the numbers were changed. He did not believe that the numbers would change again, therefore, the numbers are known. He reiterated that he would like to keep the City as close to compliance with state law as possible. If a November 2004 election target date is identified, he was not sure if there would be an emphasis on trying to get it done sooner. He recommended that a closer time frame be identified and that if more time is needed, that extension(s) be granted at that time.

Mr. Bischoff indicated that the City would be hearing from ABAG regarding the City's housing element in March 2002. He said that the City has an obligation to meet ABAG's number by June 30, 2006 and that the later the City puts off the election, the shorter the period of time in which the City can try to make up the 236 units.

Mayor Pro Tempore Carr stated that once the City hears back from HCD in March 2002, it would provide the City with some idea as to what will happen if the City's Housing Element is not in compliance. He noted that Housing Element Law is in five year increments and that if the City waits too long, the City will be in the process of updating the City's next housing element and be incrementally behind in the process. He stated that he would hate to hinder future Councils and the community by delaying actions.

Council Member Tate stated that he did not have a problem turning this over to a committee and have them brainstorm the issue. However, he has been asked several times by citizens as to the changes being proposed to Measure P. He felt that the Council should provide its comments relating to Measure P to the community. He stated that he would like issues spelled out at the beginning with a target date identified.

Council Member Chang stated her goal is to maintain the numbers of the General Plan, noting that the numbers are the intent of Measure P. She stated her support of a March 2004 election date because the City will know what the State will do as it relates to the law.

Mr. Lyle felt that it would behoove the City Council to get the committee started and receive the State's feedback in March. With the establishment of a committee at this time, the Council would be in a better position to know where to go after the March 2002 feedback.

Council Member Chang stated that she has full confidence in the community. If the City wants to extend Measure P at its current or lower rate, she felt that there would be an 80% passage no matter which election it is placed on. She indicated that it is being stated in the community that the City is growing too fast. She did not see an election date making a difference, but sees problems should the City want to increase the numbers. If it is the intent to increase the number, the City Council will see a lot of citizens disagreeing with the City.

Council Member Sellers recommended that a committee be formed as quickly as possible to review all issues. While he did not recommend that the City Council dictate specifically what the committee needs to decide, the City Council needs to provide parameters for discussion. He felt that another charge of the committee is to determine whether it is possible to take a ballot measure sooner rather than later and what they feel is reasonable given the scope of work provided by the City Council.

Action: *Council Member Sellers made a motion, seconded by Mayor Pro Tempore Carr, to **direct** staff to: 1) agendize the formation of a Committee to review Measure P as soon as possible; and 2) that staff **provide** a list of general topics which the City Council may wish to review.*

Council Member Sellers noted that the Housing Element discusses housing units. He felt that there were ways to increase the number of units, yet retain a similar increase in the number of residents.

Mayor Pro Tempore Carr recommended that staff return with two scenarios: 1) a committee consisting of City Council Members and/or Planning Commissioners with a workshop type schedule of how the Council gets the public comments; and 2) a greater appointed committee.

Council Member Sellers recommended that appropriation of funding be brought for Council consideration.

Council Member Tate felt that a smaller committee made up primarily of City Council members and Planning Commissioners could be more effective in moving things along rapidly, but would have to have a series of public outreach events. He was not thinking of restricting the committee to just Council Members and Planning Commissioners. He recommended the inclusion of a couple of citizens at large to the committee.

Council Member Sellers pointed out that the last two measures were passed without significant support from elected bodies in the City and were done by several citizens who refused to allow an intolerable situation to continue. He felt that it was testimony not only to the success of Measure P and Measure E but to the successful implementation over the last 20 years where Measure P is

considered a natural part of the institution of the community.

Council Member Chang stated that the goal should be to maintain the intent of the current Measure P. Should the City move forward with an election, she recommended the population cap be 48,000 at 2020. She did not recommend that this population cap be changed and that there be no front loading. Also, 250 units per year should be maintained.

Mr. Tichinin stated that should the proposed amendment significantly change the population cap or the rate of growth, it would be rejected by a massive turn out. He did not believe that the timing of the election would make a difference given how important Measure P is to the populace. Before proposing a measure, he recommended that the City Council engage the populace in what is being proposed. While he appreciates the work that has been done by the city in going back to ABAG to reduce their numbers, he encouraged the City to fight ABAG's numbers on the grounds of equity and fairness. The City cannot forget the impact of unduly high rate of growth on quality of life. He recommended that the City not allow ABAG to treat the city unfairly and that examining this issue should be a part of any work that is conducted on the amendment to Measure P in the future.

Mayor Kennedy requested that the motion reflect that the committee is to include community members at large as he felt that it was important that the public be a part of this process.

Vote: The motion carried unanimously (5-0).

Redevelopment Agency Action

OTHER BUSINESS:

17. ASSISTANCE TO THE MORGAN HILL CHARTER SCHOOL

Agency Member Sellers recused himself from this item as he is a parent of a child attending this school.

Director of Business Assistance and Housing Services Toy presented the staff report. He informed the Agency Commission that Mary Smathers was in attendance to answer questions which the Agency Commission may have.

Agency Member Tate requested clarification of the facade improvement program. He is seeing that the facade grant is to be used for playground equipment, picnic tables, and planter boxes. He did not see these as part of a facade and did not believe that these items were the intent of the facade program. He inquired if grants used for this type of item have been made before?

Mr. Toy responded that the Agency has previously approved grants for landscaping and planter boxes, not necessarily for playground equipment. He stated that facade grants are generally made

for improvements to the building. He stated that under existing guidelines, staff has not included playground equipment but that the Agency can include playground equipment because it will be purchasing a facade easement to improve the property. He indicated that the Agency Commission approved a double facade grant for the Oak Glen shopping center. In response to Agency Member Carr's question, Mr. Toy indicated that Charter School had to provide matching funds to whatever improvements were to be installed toward their project.

Agency Member Tate recollected that Britton Middle School received facade grants for auditorium and gymnasium improvements and that he considered this to be a facade improvement.

Executive Director Tewes informed the City Council that the Redevelopment Agency has awarded a significant grant for the preservation of the Morgan Hill School to be used by a private entity. He clarified that the improvements at Britton Middle School were for public improvements (e.g., sidewalks) at the request of the School District.

In response to Chairman Kennedy's question, Mr. Toy indicated that the improvements to be salvageable are the exterior of the building, assuming that someone can come in and use the existing facility. He did not believe that a commercial user would be interested in the playground equipment. He felt that the planters could be of benefit but that it would be difficult to say.

Mayor Kennedy said that he walked behind the facility before it was completed and that it was in a deplorable condition. He noted that the Charter School facility backs up to an adjacent neighborhood that is being upgraded. He felt that the money to be spent would dress up the neighborhood on the backside as well as the front. He looks at this in terms of a general benefit to the entire neighborhood.

Chairman Kennedy opened the floor to public comments.

Ms. Smathers, Director of Charter School, stated that the budget information presented is current and identifies what the facade grant would be used for. She indicated that there are exterior improvements that have been paid for and that improvements have been made. She stated that Charter School has spent well over \$6,000 that would be eligible for reimbursable improvements. She stated that Charter School is a benefit to the community and a positive addition to the Morgan Hill Plaza Shopping Center and the neighborhood in which it is located. She indicated that Charter School is requesting two facade improvement grants as the facility has two significant facades, one in the shopping center and one the back facing the Ciolino Villas and the Apartment Complex on Del Monte Avenue, each for \$15,000 for a total of \$30,000. She said that the additional \$10,000 was approved as a grant by the Agency Commission in June 2001. It is felt that Charter School has more than met the match requirement for the facade program with the improvements. She indicated that a permanent site selection task force has been established comprising of community leaders from various backgrounds that will oversee the process of finding a permanent site, developing a building/fund raising plan to pay for the building. Overall, she felt that Charter School is a positive

benefit to the City and its residents and that they look forward in working with the City and the Redevelopment Agency to improve the Morgan Hill Plaza school site through the facade improvement program.

No other comments offered.

Agency Member Tate agreed that the back part is eligible for the facade program but that he has to draw the line with the playground structure (over half the cost being requested). Should the Agency Commission approve a facade grant for playground equipment, he felt that the Agency Commission would receive several requests from schools for playground equipment. He did not believe that the Agency should open the doors for facade improvement funds to be used for playground equipment. He stated that he could approve everything being requested with the exception of the playground equipment.

Executive Director Tewes stated that staff is bringing this item before the Agency Commission because the policy does not address playground equipment. He said that it is possible for the Agency Commission to approve the grant to include the playground equipment cost and that this cost would be lawful, appropriate and that staff does not have an objection to this. He felt that this would be a Redevelopment Agency discretion.

Chairman Kennedy felt that the improvements, including the playground structures, would benefit the entire neighborhood. He did not believe that a Pandora's box would be opened as this was a special case because the school is located in a shopping center that backs up to a neighborhood and that it would provide a benefit to the neighborhood in many respects. Therefore, he would support the request.

Vice-chairwoman Chang stated her support of Chairman Kennedy's point of view.

Agency Member Tate felt that every public and private school in the community would come before the Redevelopment Agency and state that they are special cases and that they also serve a neighborhood. Therefore, he could not support funding for the playground equipment.

Chairman Kennedy stated that he is prepared to hear and address other requests, recollecting that the Agency assisted Britton Middle School with auditorium improvements that provided the public with a benefit. He stated his support of joint projects and that he would like to see the Agency do more with public schools to help where it can.

Agency Member Tate noted that the School District and the City each have their funding sources. It was his belief that the citizens of the community do not expect the City to be in the School District's business. He did not see a fenced playground area benefitting the neighborhood.

Agency Member Carr asked if the fenced playground area precludes members in the community

from using it?

Ms. Smathers responded that the playground is not precluded to be used by the neighborhood or the public. She indicated that the school would be willing to allow others to use its facility. She said that the school is in the process of defining a facility use policy as requests are being made by community organizations for its use.

Agency Member Carr appreciated the fact that Charter School is in the process of looking for a permanent home as he still has a mixed feelings about the location of the current school site. He was pleased to hear Chairman Kennedy's comment that he would be interested in partnering with other schools. However, he felt that a facade improvement grant should be used for permanent improvements to structures. He did not believe that structures that can be moved from one location to another should be considered as facades (e.g., playground and picnic tables). He stated that he would entertain grant monies for the additional dollars and an extremely advantage loan term for the additional dollars. He said that although he still has some concerns with the location of school, the fact remains that the students are there today and as a city, it has a responsibility to their safety in this location. He stated that he would like to find a way to help Charter School move, but could not approve a grant for the playground structure. If there is another mechanism that the Agency Commission can talk about relating to a very advantage loan term, he felt that this would be the direction he would like to take.

Vice-chairwoman Chang recommended that the Agency authorize \$18,000 in a grant and \$22,000 as a 5-10 year loan with mutually agreeable terms.

Executive Director Tewes clarified that this action addresses improvements to a private, taxable building which is precisely one of the purposes of the Redevelopment Agency – to encourage investment and reinvestment in the downtown.

Action: *On a motion by Vice-chairwoman Chang and seconded by Agency Member Tate, the Agency Commission, on a 4-0-1 vote with Agency Member Sellers abstaining: 1) **approved** a grant in the amount of \$18,000 and a \$22,000 loan from the Facade Improvement Program for The Charter School Facility at the Albertson's Center; and 2) **Authorized** the Executive Director to execute the loan.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting at 9:00 p.m. to conclude discussion of closed sessions.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 9:57 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken on Closed Session Item 1.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 9:58 p.m.

MINUTES RECORDED AND PREPARED BY:

Irma Torrez, City Clerk/Agency Secretary